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Paper No. 15

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MAILED

JUN 23 2011

OFFICE OF PETITIONS

In re Patent No. 6,059,140 :
Issue Date: 05/09/2000 :
Application Number: 09/263,127 : LETTER DISMISSING PETITION
Filing Date: 03/05/1999 :
Attorney Docket Number: :
17958.001 :
:

This is a letter in reference to the paper filed on May 20, 2011, regarding the second maintenance fee payment for the above-referenced patent, which is treated as a petition under 37 CFR 1.377.

The petition is dismissed.

The patent issued on May 9, 2000. The first maintenance fee was timely paid. The second maintenance fee could have been paid from May 9 through November 9, 2007, or, with a surcharge, from November 10, 2007, through May 9, 2008. The patent expired at midnight on May 9, 2008, for failure to timely pay the second maintenance fee.

Patentee asserts that the second maintenance fee was timely paid via a check submitted to the USPTO on October 10, 2007.

At the outset, pursuant to MPEP 2575, 37 CFR 1.377 provides a mechanism for review of a decision refusing to accept and record payment of a maintenance fee filed prior to the expiration of a patent. 37 CFR 1.377(a) permits a patentee who is dissatisfied with the refusal of the Office to accept and record a maintenance fee which was filed prior to the expiration of the patent to petition the Director to accept and record the maintenance fee.

Any petition filed under 37 CFR 1.377 must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of. The petition must be accompanied by the proper petition fee (37 CFR 1.17(g)). The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to have resulted from an error by the Office.

The proper fee for a petition under 37 CFR 1.377 has not been submitted however. A petition fee of \$200.00 is required upon filing of a petition under 37 CFR 1.377. Patent and trademark fees and charges payable to the Patent and Trademark Office are required to be paid in advance, that is, at the time of requesting any action by the Office for which a fee or charge is payable.¹ As such, the petition fee is a prerequisite to the filing of the present petition, and the Office will not reach the merits of the petition unless and until the petition fee is submitted. Any request for reconsideration of this petition must be accompanied by the petition fee.

Furthermore, the papers filed are unsigned. 37 CFR 1.377 requires that any petition filed thereunder must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. If the petition is signed by an assignee, a Statement Under 37 CFR 3.73(b) must be submitted with the petition.

Furthermore, a review of Office financial records does not reveal that any payment was received. Petitioner must show, in any renewed petition, that the maintenance fee was proffered to the USPTO prior to May 9, 2008. Petitioner should submit a copy of any cancelled check, bank statement, or other evidence showing that the payment of the second maintenance fee was **actually received** by the USPTO.

The address in the petition is different than the correspondence address. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record. A change of correspondence address should be filed if the correspondence address needs to be updated.

¹ 37 CFR 1.22(a).

Additionally, the appropriate revocation and/or new power of attorney should be filed if the attorney information is no longer current.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The application will be retained in the Office of Petitions for TWO (2) MONTHS to await petitioners' response to this communication.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: Form PTO/SB/81A
 Form PTO/SB/96
 Form PTO/SB/123

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